In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 1166

H. T. JORDAN, JR., AND GERVASE A. BRYANT,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Western District of Oklahoma, petitioners were convicted of conspiracy and two substantive counts (of a 12 count indictment)[1] charging the making of false statements to the Federal Housing Administration (FHA) in violation of 18 U.S.C. 1010, 2 and 371 (R. 1–10).[2] Each of the petitioners was sentenced to imprisonment for 1 year on the conspiracy count; as to each the imposition of sentence was suspended on the substantive counts and

[1] Two substantive counts were dismissed and the jury found petitioners not guilty on seven other counts.

[2] "R." refers to the transcript of record prepared for the use of the court below.

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petitioners placed upon probation for five years to commence upon the expiration of confinement (R. 10–13). The court of appeals affirmed, 370 F. 2d 126 (Pet. App. 2–6).

Petitioners were builders and sellers of homes, the purchases of which were financed by loan companies upon guaranties by the FHA. The government introduced at trial documentary evidence relating to such loans and the testimony of the various borrowers that petitioners induced or made false representations as to the borrowers' income, down-payment, intended occupancy, *etc.* (See R. 18–21, 22–26, 39–42).

1. Petitioners' contention in this Court that they have been fatally prejudiced by the admission at trial of hearsay testimony (a contention presented for the first time in a petition for rehearing below) is frivolous. They point to the testimony of loan applicants (named in a substantive count upon which imposition of sentence was suspended (Pet. 8–9) and in one overt act of the conspiracy count (Pet. 7–8)), as to advice imparted to them by representatives of the lending companies concerning the status of their accounts (Pet. 8–9). These passing references were obviously without significance in light of the false statements on various documents and the testimony of the various borrowers.

2. There is no merit in the attack on the constitutionality of 18 U.S.C. 1010 on the grounds that it does not allege that the Federal Housing Administration is an agency of the United States, fails adequately to distinguish between acts committed with lawful in-

tent as opposed to unlawful intent, and constitutes an abridgement of freedom of speech (Pet. 16–20).[3] As the Eighth Circuit said in *Syverson* v. *United States*, 342 F. 2d 780, 781, certiorari denied, 382 U.S. 961:

> * * * It [18 U.S.C. 1010] seems to us to be clear and plain on its face, capable of comprehension by a person of ordinary intelligence, neither vague nor indefinite, and directed to the performance of a carefully delineated material act intended to accomplish, through falsity, a specifically defined result affecting FHA action. * * *

See also *Shayne* v. *United States*, 255 F. 2d 739, 744 (C.A. 9), certiorari denied, 358 U.S. 823.

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[3] 18 U.S.C. 1010 provides:

"Whoever, for the purpose of obtaining any loan or advance of credit from any person, partnership, association, or corporation with the intent that such loan or advance of credit shall be offered to or accepted by the Federal Housing Administration for insurance, or for the purpose of obtaining any extension or renewal of any loan, advance of credit, or mortgage insured by such Administration, or the acceptance, release, or substitution of any security on such a loan, advance of credit, or for the purpose of influencing in any way the action of such Administration, makes, passes, utters, or publishes any statement, knowing the same to be false, or alters, forges, or counterfeits any instrument, paper, or document, or utters, publishes, or passes as true any instrument, paper, or document, knowing it to have been altered, forged, or counterfeited, or willfully overvalues any security, asset, or income, shall be fined not more than $5,000 or imprisoned not more than two years, or both."

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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